


Councilmember Sharon Ambrose

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Sharon Ambrose introduced the following bill, which was referred to the
Committee on _____.

To enact consumer protection for signatures obtained by electronic means.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act
may be cited as the "Electronic Signatures Consumer Protection Act of 2001".

Sec. 2. Consumer disclosures.

(a) Notwithstanding any other provision of law, if a statute, regulation, or other rule of law
requires that information relating to a transaction be provided or made available to a consumer in
writing, the use of an electronic record to provide or make available (whichever is required) the
information satisfies the requirement that the information be in writing if:

(1) The consumer has affirmatively consented to such use and has not withdrawn
the consent;

(2) The consumer, prior to consent, is provided with a clear and conspicuous
statement:

(A) Informing the consumer of (i) any right or option of the consumer to have
the record provided or made available on paper or in nonelectronic form, and (ii) the right of the

consumer to withdraw the consent to have the record provided or made available in an electronic
form and of any conditions, consequences (which may include termination of the parties'
relationship), or fees in the event of such withdrawal;

(B) Informing the consumer of whether the consent applies (i) only to the particular
transaction which gave rise to the obligation to provide the record, or (ii) to identified categories
of records that may be provided or made available during the course of the parties' relationship;

(C) Describing the procedures that the consumer must use to withdraw consent as
provided in paragraph (A) of this subsection and to update information needed to contact the
consumer electronically; and

(D) Informing the consumer (i) how, after the consent, the consumer may, upon
request, obtain a paper copy of an electronic record, and (ii) whether a fee will be charged for the
copy;

(3) The consumer:

(A) Prior to consent, is provided with a statement of the hardware and software
requirements for access to and retention of the electronic records; and

(B) Consents electronically, or confirms his or her consent electronically, in a
manner that reasonably demonstrates that the consumer can access information in the electronic
form that will be used to provide the information that is the subject of the consent; and

(4) After the consent of a consumer in accordance with subsection (a)(1) of this section, if
a change in the hardware or software requirements needed to access or retain electronic records
creates a material risk that the consumer will not be able to access or retain a subsequent electronic
record that was the subject of the consent, the person providing the electronic record:

(A) Provides the consumer with a statement of (i) the revised hardware and software requirements for access to and retention of the electronic records, and (ii) the right to withdraw consent without the imposition of any fees for the withdrawal and without the imposition of any condition or consequence that was not disclosed under subsection (b)(1) of this section; and

(B) Again complies with paragraph (3) of this subsection.

(b)(1) Nothing in this act shall affect the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law.

(2) If a law that was enacted prior to the effective date of this act expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

(c) The legal effectiveness, validity, or enforceability of a contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by the consumer in accordance with subsection (a)(3)(B) of this section.

(d) Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with subsection (a) of this section prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with subsection (a)(4) of this section may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this subsection.

(e) This section shall not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this act to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

(f) An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this section except as otherwise provided under applicable law.

Sec. 3. Retention of contracts and records.

(a) If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction be retained, that requirement shall be met by retaining an electronic record of the information in the contract or other record that:

(1) Accurately reflects the information set forth in the contract or other record; and

(2) Remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by the statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

(b) A requirement to retain a contract or other record in accordance with subsection (a) of this section shall not apply to any information whose sole purpose is to enable the contract or other record to be sent, communicated, or received.

(c) If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction to be provided, available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, the statute, regulation, or rule of law shall be satisfied by an electronic record that complies with subsection (a) of this section.

(d) If a statute, regulation, or other rule of law requires the retention of a check, the requirement shall be satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a) of this section.

Sec. 4. Accuracy and ability to retain contracts and other records.

Notwithstanding any other provision of law, if a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction be in writing, the legal effect, validity, or enforceability of an electronic record of the contract or other record may be denied if the electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

Sec. 6. Effective Date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.